

IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

MARK HAIRSTON, :  
 :  
 Plaintiff, :  
 :  
 vs. : CIVIL ACTION 05-00297-CG-B  
 :  
 DR. BARNS, et al., :  
 :  
 Defendants. :

REPORT AND RECOMMENDATION

Plaintiff, an Alabama prison inmate proceeding *pro se* and *in forma pauperis*, filed this § 1983 action. This action was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.2(c)(4), and is now before the Court due to Plaintiff's failure to prosecute and to obey the Court's Orders.

The last action taken by Plaintiff in this case was the filing of his Motion for the Production of Documents II on November 1, 2005. (Doc. 12). In his Motion, Plaintiff indicated that he would complete his sentence in March 2006. However, Plaintiff did not provide an address for use after his release. On September 6, 2006, the Court denied Plaintiff's Motion for Production of Documents II, and ordered him to advise the Court if he wanted to proceed with his action. (Doc. 14). The Court's Order was sent to Plaintiff at St. Clair Correctional Facility, which is the last address that Plaintiff provided to the Court. The Order was returned to the Court with the notation "Released End of

Sentenced(sic)." (Doc. 15).

The Court has examined the Alabama Department of Corrections' website and has determined that Plaintiff is no longer in its custody. Moreover, Plaintiff has not advised the Court of his new address since his release even though he was expressly directed to do so, or suffer the dismissal of his action. (Docs. 2 & 7). It is clear that Plaintiff is well aware of his obligation to notify the Court of his new address as indicated by his prior notification to the Court of new address following his transfer to the St. Clair Correctional Facility in Springville, Alabama. (Doc. 11).

Based upon the above, as well as the fact that the last action taken by Plaintiff in this action was on November 1, 2005 (Doc. 12), and that he has failed to notify the Court of his new address, the undersigned concludes Plaintiff has abandoned the prosecution of his action. Upon consideration of the alternatives available to the Court, it is recommended that this action be dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure as no other lesser sanction will suffice. Link v. Wabash R.R., 370 U.S. 626, 630 (1962); Zocaras v. Castro, 465 F.3d 479, 484 (11th Cir. 2006); World Thrust Films, Inc. v. International Family Entertainment, Inc., 41 F.3d 1454, 1456-57 (11th Cir. 1995); Mingo v. Sugar Cane Growers Co-op, 864 F.2d 101, 102 (11th Cir. 1989); Goforth v. Owens, 766 F.2d 1533, 1535 (11th Cir. 1985); Jones v. Graham, 709 F.2d 1457, 1458 (11th Cir. 1983); Hildebrand

v. Honeywell, Inc., 622 F.2d 179, 181 (5th Cir. 1980).<sup>1</sup> Accord Chambers v. NASCO, Inc., 501 U.S. 32, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991) (finding that federal courts' inherent power to manage their own proceedings authorized the imposition of attorney's fees and related expenses as a sanction); Malautea v. Suzuki Motor Co., 987 F.2d 1536, 1545-46 (11th Cir.) (ruling that the court's inherent power to manage actions before it permitted the imposition of fines), cert. denied, 510 U.S. 863, 114 S.Ct. 181, 126 L.Ed.2d 140 (1993).

The attached sheet contains important information regarding objections to the Report and Recommendation.

**DONE** this **29th** day of **January, 2007**.

/S/ SONJA F. BIVINS  
**UNITED STATES MAGISTRATE JUDGE**

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<sup>1</sup>The Eleventh Circuit in Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (*en banc*), adopted as binding precedent the decisions of the former Fifth Circuit rendered prior to October 1, 1981.

**MAGISTRATE JUDGE'S EXPLANATION OF PROCEDURAL RIGHTS  
AND RESPONSIBILITIES FOLLOWING RECOMMENDATION  
AND FINDINGS CONCERNING NEED FOR TRANSCRIPT**

1. **Objection.** Any party who objects to this recommendation or anything in it must, within ten days of the date of service of this document, file specific written objections with the clerk of court. Failure to do so will bar a *de novo* determination by the district judge of anything in the recommendation and will bar an attack, on appeal, of the factual findings of the magistrate judge. See 28 U.S.C. § 636(b)(1)(c); Lewis v. Smith, 855 F.2d 736, 738 (11th Cir. 1988). The procedure for challenging the findings and recommendations of the magistrate judge is set out in more detail in SD ALA LR 72.4 (June 1, 1997), which provides, in part, that:

A party may object to a recommendation entered by a magistrate judge in a dispositive matter, that is, a matter excepted by 28 U.S.C. § 636(b)(1)(A), by filing a "Statement of Objection to Magistrate Judge's Recommendation" within ten days after being served with a copy of the recommendation, unless a different time is established by order. The statement of objection shall specify those portions of the recommendation to which objection is made and the basis for the objection. The objecting party shall submit to the district judge, at the time of filing the objection, a brief setting forth the party's arguments that the magistrate judge's recommendation should be reviewed *de novo* and a different disposition made. It is insufficient to submit only a copy of the original brief submitted to the magistrate judge, although a copy of the original brief may be submitted or referred to and incorporated into the brief in support of the objection. Failure to submit a brief in support of the objection may be deemed an abandonment of the objection.

A magistrate judge's recommendation cannot be appealed to a Court of Appeals; only the district judge's order or judgment can be appealed.

2. **Opposing party's response to the objection.** Any opposing party may submit a brief opposing the objection within ten (10) days of being served with a copy of the statement of objection. Fed. R. Civ. P. 72; SD ALA LR 72.4(b).

3. **Transcript (applicable where proceedings tape recorded).** Pursuant to 28 U.S.C. § 1915 and Fed.R.Civ.P. 72(b), the magistrate judge finds that the tapes and original records in this action are adequate for purposes of review. Any party planning to object to

this recommendation, but unable to pay the fee for a transcript, is advised that a judicial determination that transcription is necessary is required before the United States will pay the cost of the transcript.

**DONE** this **29th** day of **January, 2007**.

          /S/ SONJA F. BIVINS            
**UNITED STATES MAGISTRATE JUDGE**